

BOARD OF COUNTY COMMISSIONERS

INTERDEPARTMENTAL MEMORANDUM

TO: Jim Pilcher
Chief, Survey and Right of Way Services

FROM: Herbert W. A. Thiele
County Attorney
Daniel J. Rigo
Assistant County Attorney



DATE: November 23, 2004

SUBJECT: Request for Abandonment of Calle De Santos Road and Camino Real

This memo responds to your request for our legal opinion regarding the referenced matter. It is our understanding that the Bosque De Augustine Homeowners Association has requested the County to abandon two 60-foot unimproved strips of land extending approximately 75 feet from the ends of the referenced cul-de-sac streets to the adjacent property line (the Sixty-Foot Strips). These two strips of land have been shown on the recorded plat map as areas, "reserved for future right of way." You have asked us if the plat notation reserving the Sixty Foot Strips for future right of way keeps the title in the developer or would they have been dedicated to the County by virtue of the "other right of way" language in the plat dedication.

Based on the definition of "right-of-way" in Fla. Stat. 177.031(16) to include "land dedicated, deeded, used, or *to be used* for a street, alley, walkway . . . or other purpose by the public . . ." (emphasis added), the depiction on the recorded plat of these areas reserved for future right of way suggests to the public that these areas can be used in the future for streets, alleys, walkways, or other such public uses. As such, regardless of the interpretation of the "other right of way" language in the plat dedication, these interests in the public create an encumbrance on the Sixty-Foot Strips that can be extinguished only through the statutory abandonment procedure in Fla. Stat. 336.09 and 336.10. In accordance with the reversion language in the plat dedication, title to the Sixty Foot Strips would revert to the dedicator, Augustine Forest Partners, upon the County's abandonment.

As confirmed with John Waddill of First Title Services, a purchaser wishing to obtain a title policy insuring clear title to the Sixty-Foot Strips would be required to produce the following:

1. An Abandonment Resolution adopted by the Board of County Commissioners thereby extinguishing any public interests in the property, and

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2. A quit-claim deed or other such instrument of release executed by the dedicator or its successors or assigns (in this case Augustine Forest Partners) thereby extinguishing the private interests in the property.

In summary, although the recordation of the plat may not be conclusive that the Sixty-Foot Strips were in fact dedicated to the County, it does create enough of a cloud on the title to require an abandonment by the County. If you have any additional questions regarding this matter, please don't hesitate to contact our office.

DJR/jm